

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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| In re:   | Adv. Pro. No. 08-1789 (SMB)                            |
| BERNARD L. MADOFF INVESTMENT<br>SECURITIES LLC,  | SIPA LIQUIDATION                                       |
| Debtor.  | (Substantively Consolidated)                           |
| IRVING H. PICARD, Trustee for the Liquidation of<br>Bernard L. Madoff Investment Securities LLC, |  |
| Plaintiff,   |  |
| v.   |  |
| DEFENDANTS LISTED ON APPENDIX A<br>ATTACHED HERETO,  | Adv. Pro. Nos. listed on Appendix A<br>Attached Hereto |
| Defendants.  |  |

**ORDER GRANTING IN PART AND DENYING IN PART  
DEFENDANTS' MOTIONS TO DISMISS**

The Defendants listed on Appendix A attached hereto (collectively, “Defendants”) have filed motions to dismiss (the “Motions to Dismiss”) complaints or amended complaints filed against them by Plaintiff Irving H. Picard, as trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.* (“SIPA”) and the substantively consolidated estate of Bernard L. Madoff (the “Complaints”).

On January 17, 2014 and March 10, 2014, the Trustee and the Securities Investor Protection Corporation (“SIPC”) filed separate memoranda of law opposing the Motions to

Dismiss (the “Opposition Briefs”). On or before March 17, 2014, certain Defendants filed replies in further support of their respective Motions to Dismiss (the “Reply Briefs”).

On September 17, 2014, a hearing on the Motions to Dismiss was held by the Honorable Stuart M. Bernstein (the “Hearing”). Before and after the Hearing, various parties submitted supplemental authorities and other submissions to the Court. The Court, having reviewed the Motions to Dismiss, the Opposition Briefs, the Reply Briefs, the supplemental authorities and other submissions, and having heard the argument of counsel at the Hearing, granted in part and denied in part the Motions to Dismiss for reasons set forth in its Memorandum Decision Regarding Omnibus Motions to Dismiss (the “Decision”) entered June 2, 2015.

On June 22, 2015, the Supreme Court of the United States denied certiorari of the Trustee’s appeal of *SIPC v. Ida Fishman Revocable Trust*, 14-1128 and *Picard v. Ida Fishman Revocable Trust*, 14-1129 (the “Supreme Court Decision”), and thus section 546(e) of the Bankruptcy Code applies to those adversary proceedings identified on Appendix A attached hereto (the “Adversary Proceedings”).

Accordingly, it is hereby **ORDERED** that:

1. Pursuant to the Decision and the Supreme Court Decision, counts in each Complaint included on Appendix A, other than those seeking to avoid and recover initial transfers pursuant to sections 548(a)(1)(A), 550, and 551 of the Bankruptcy Code, are hereby dismissed.

2. As to the count in each Complaint included on Appendix A seeking to recover subsequent transfers from subsequent transferee defendants pursuant to section 550(a) of the Bankruptcy Code, applicable provisions of SIPA including section 78fff-2(c)(3) and New York Debtor and Creditor Law (the “Subsequent Transferee Count”), the Motions to Dismiss are

granted with respect to the Subsequent Transferee Count and such count is hereby dismissed from each Complaint without prejudice to (i) the Trustee's right to seek to amend in accordance with Rule 15(a)(2) of the Federal Rules of Civil Procedure, made applicable hereto by Federal Rule of Bankruptcy Procedure 7015, and/or (ii) the Trustee's rights under Section 550(f) of the Bankruptcy Code.

3. In all other respects, the Motions to Dismiss are denied.

4. Defendants shall file their answers to the Complaints on or before September 18, 2015. The Adversary Proceedings will move forward thereafter on schedules to be established by further order of the Court after consultation among the parties in accordance with the applicable rules of procedure.

5. This Court retains jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York

/s/ STUART M. BERNSTEIN

July 16<sup>th</sup>, 2015

HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE

| <b>APPENDIX A</b> |                      |   |  |
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|                   | <b>Adv. Pro. No.</b> | <b>Defendant(s)</b>   | <b>Counsel for Defendant(s)</b>              |
| 1.                | 10-04361             | Picard v. Harvey L. Werner<br>Revocable Trust, et al.           | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 2.                | 10-04394             | Picard v. Frederic Z.<br>Konigsberg, et al.                     | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 3.                | 10-04468             | Picard v. Ken-Wen Family<br>Limited P'ship et al.               | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 4.                | 10-04478             | Estate of Leonard M. Heine Jr.,<br>et al.                       | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 5.                | 10-04561             | Picard v. Jeffrey R. Werner<br>11/1/98 Trust, et al.            | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 6.                | 10-05094             | Picard v. The Estate of Carolyn<br>Miller, et al                | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 7.                | 10-05231             | Picard v. Trust under Deed of<br>Suzanne R. May, et al          | Bernfeld, DeMatteo &<br>Bernfeld, LLP        |
| 8.                | 10-04573             | Picard v. Bruce Leventhal 2001<br>Irrevocable Trust, et al.     | Lax & Neville LLP                            |
| 9.                | 10-04616             | Picard v. Nicolette Wernick<br>Nominee Partnership, et al.      | Lax & Neville LLP                            |
| 10.               | 10-04647             | Picard v. Abbit Family Trust, et<br>al                          | Lax & Neville LLP                            |
| 11.               | 10-04655             | Picard v. Jaffe Family<br>Partnership, et al.                   | Lax & Neville LLP                            |
| 12.               | 10-04960             | Picard v. Estate of Elizabeth H.<br>Kahn aka Betty Kahn, et al. | Lax & Neville LLP                            |
| 13.               | 10-05048             | Picard v. Armand L. Greenhall,<br>et al.                        | Lax & Neville LLP                            |
| 14.               | 10-05160             | Picard v. The Lanny Rose Rev.<br>Trust, et al                   | Lax & Neville LLP                            |
| 15.               | 10-04370             | Picard v. Sidney Marks Trust<br>2002, et al.                    | Wilmer Cutler Pickering<br>Hale and Dorr LLP |
| 16.               | 10-04698             | Picard v. Nancy J. Marks Trust<br>2002, et al.                  | Wilmer Cutler Pickering<br>Hale and Dorr LLP |
| 17.               | 10-04511             | Picard v. Weithorn/ Casper<br>Associates For Selected           | Becker Glynn, Melamed &                      |

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|     |          | Holdings, LLC, et al.   | Muffly LLP  |
| 18. | 10-04419 | Picard v. Katz Group Limited Partnership, et al.                                | Becker Meisel LLC                                 |
| 19. | 10-04323 | Picard v. Weiner Family Limited. Partnership, et al.                            | Fox Rothschild LLP                                |
| 20. | 10-04606 | Picard v. Florence W. Shulman   | Becker & Poliakoff LLP                            |
| 21. | 10-04661 | Picard v. Krellenstein Family Limited Partnership II of 1999, et al.            | Akerman LLP                                       |
| 22. | 10-04636 | Picard v. Richard J. Helfman Life Insurance Trust                               | Klestadt Winters Jureller Southard & Stevens, LLP |
| 23. | 10-04816 | Picard v. Adeline Sherman Revocable Trust as Amended, et al.                    | Klestadt Winters Jureller Southard & Stevens, LLP |
| 24. | 10-04327 | Picard v. Gertrude E. Alpern Revocable Trust, et al.                            | Becker & Poliakoff LLP                            |
| 25. | 10-04397 | Picard v. Fern C. Palmer Revocable Trust Dtd 12/31/9, et al.                    | Becker & Poliakoff LLP                            |
| 26. | 10-04406 | Picard v. Triangle Properties #39, et al.                                       | Becker & Poliakoff LLP                            |
| 27. | 10-04438 | Picard v. Estate of Seymour Epstein, et al.                                     | Becker & Poliakoff LLP                            |
| 28. | 10-04446 | Picard v. Trust Dated 12/6/99 Walter and Eugenie Kissinger, et al.              | Becker & Poliakoff LLP                            |
| 29. | 10-04474 | Picard v. Roger Rechler Revocable Trust, et al.                                 | Becker & Poliakoff LLP                            |
| 30. | 10-04487 | Picard v. Robert Weintraub, et al.  | Becker & Poliakoff LLP                            |
| 31. | 10-04539 | Picard v. The Gerald and Barbara Keller Family Trust, et al.                    | Becker & Poliakoff LLP                            |
| 32. | 10-04545 | Picard v. Jerome Goodman, Individually, as trustee for The Jerome Goodman Child | Becker & Poliakoff LLP                            |
| 33. | 10-04570 | Picard v. Jacob M. Dick Rev Living Trust DTD 4/6/01, et al.                     | Becker & Poliakoff LLP                            |
| 34. | 10-04610 | Picard v. The Whitman Partnership, et al.                                       | Becker & Poliakoff LLP                            |
| 35. | 10-04668 | Picard v. Timothy Shawn Teufel and Valerie Ann Teufel Family Trust, et al.      | Becker & Poliakoff LLP                            |

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| 36. | 10-04680 | Picard v. Chalek Associates LLC, et al.   | Becker & Poliakoff LLP |
| 37. | 10-04750 | Picard v. Samdia Family L.P., a Delaware Limited Partnership, et al.            | Becker & Poliakoff LLP |
| 38. | 10-04752 | Picard v. Kuntzman Family LLC, et al.   | Becker & Poliakoff LLP |
| 39. | 10-04786 | Picard v. Edwin Michalove   | Becker & Poliakoff LLP |
| 40. | 10-04803 | Picard v. The Estelle Harwood Family Limited Partnership, et al.                | Becker & Poliakoff LLP |
| 41. | 10-04823 | Picard v. Frank DiFazio, et al.   | Becker & Poliakoff LLP |
| 42. | 10-04837 | Picard v. Leslie Ehrlich f/k/a Leslie Harwood , et al.                          | Becker & Poliakoff LLP |
| 43. | 10-04852 | Picard v. Alvin E. Shulman Pourover Trust, et al.                               | Becker & Poliakoff LLP |
| 44. | 10-04859 | Picard v. Bert Margolies Trust, et al.  | Becker & Poliakoff LLP |
| 45. | 10-04867 | Picard v. Estate of Steven I. Harnick, et al.                                   | Becker & Poliakoff LLP |
| 46. | 10-04884 | Picard v. Steven Andelman   | Becker & Poliakoff LLP |
| 47. | 10-04912 | Picard v. Harry Smith Revocable Living Trust, et al.                            | Becker & Poliakoff LLP |
| 48. | 10-04920 | Picard v. Glenhaven Limited, et al.   | Becker & Poliakoff LLP |
| 49. | 10-04961 | Picard v. Sylvan Associates LLC f/k/a Sylvan Associates Ltd Partnership, et al. | Becker & Poliakoff LLP |
| 50. | 10-04979 | Picard v. James M. New Trust dtd 3/19/01, et al.                                | Becker & Poliakoff LLP |
| 51. | 10-04991 | Picard v. Guiducci Family Limited Partnership, et al.                           | Becker & Poliakoff LLP |
| 52. | 10-04993 | Picard v. Melvin H. and Leona Gale Joint Revocable Living Trust, et al.         | Becker & Poliakoff LLP |
| 53. | 10-04995 | Picard v. Trust U/Art Fourt O/W/O Israel Wilenitz, et al.                       | Becker & Poliakoff LLP |
| 54. | 10-05026 | Picard v. Walter Freshman Trust A, a Florida trust, et al.                      | Becker & Poliakoff LLP |
| 55. | 10-05051 | Picard v. Bevro Realty Corp. Defined Benefit Pension Plan, et al.               | Becker & Poliakoff LLP |

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| 56. | 10-05104 | Picard v. The Gloria Albert Sandler and Maurice Sandler Revocable Living Trust    | Becker & Poliakoff LLP  |
| 57. | 10-05116 | Picard v. Leonard J. Oguss Trust, et al.  | Becker & Poliakoff LLP  |
| 58. | 10-05124 | Picard v. The Lawrence J. Ryan and Theresa R. Ryan Revocable Living Trust, et al. | Becker & Poliakoff LLP  |
| 59. | 10-05127 | Picard v. Atwood Management Profit Sharing Plan & Trust, etc., et al.             | Becker & Poliakoff LLP  |
| 60. | 10-05128 | Picard v. JABA Associates LP, et al.  | Becker & Poliakoff LLP  |
| 61. | 10-05133 | Picard v. Boyer H. Palmer, individually, etc, et al.                              | Becker & Poliakoff LLP  |
| 62. | 10-05135 | Picard v. Reckson Generation, et al.  | Becker & Poliakoff LLP  |
| 63. | 10-05150 | Picard v. Plafsky Family LLC Retirement Plan, Robert Plafsky, et al.              | Becker & Poliakoff LLP  |
| 64. | 10-05151 | Picard v. Palmer Family Trust, etc., et al.                                       | Becker & Poliakoff LLP  |
| 65. | 10-05184 | Picard v. Laura Ann Smith Revocable Living Trust, et al                           | Becker & Poliakoff LLP  |
| 66. | 10-05232 | Picard v. Trust for the benefit of Ryan Tavlin, et al.                            | Becker & Poliakoff LLP  |
| 67. | 10-05259 | Picard v. Stanley I. Lehrer, individually, et al.                                 | Dentons LLP/ Frejka LLP |
| 68. | 10-05309 | Picard v. William Pressman, Inc., et al.  | Becker & Poliakoff LLP  |
| 69. | 10-05312 | Picard v. Doron Tavlin Trust U/A 2/4/91, et al.                                   | Becker & Poliakoff LLP  |
| 70. | 10-05435 | Picard v. Keith Schaffer, et al.  | Becker & Poliakoff LLP  |
| 71. | 10-05438 | Picard v. Realty Negotiators Inc. Defined Benefit Pension Plan, et al.            | Becker & Poliakoff LLP  |